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October 22, 2008

TO: Each Supervisor

FROM: Robert G. Splawn, MD, MPH, FACEP *RS*
Interim Chief Medical Officer

SUBJECT: **MERCK & COMPANY NATIONAL SETTLEMENT**

This is to provide you with information regarding a February 7, 2008 national Medicaid rebate settlement between Merck & Company (MERCK) and the United States Attorney's Office, the Department of Justice (DOJ) and other governmental departments and agencies. The Settlement was agreed to resolve two whistle-blower investigations into the alleged miscalculation of Medicaid rebates and improper marketing activities. MERCK has agreed to pay more than \$650 million to resolve allegations that the pharmaceutical manufacturer failed to pay proper rebates to Medicaid and other government health care programs and paid illegal remuneration to health care providers to induce them to prescribe the company's products. As part of the Settlement, MERCK has agreed to pay over \$9 million in refunds to 340B Program "covered entities" (as defined in 42 U.S.C. 256b(a)(4)) that purchased their manufactured pharmaceutical products, Zocor®, Vioxx®, or Pepcid® during select time periods between 1998 and 2006.

The suit filed against MERCK further alleged that from 1997-2001, MERCK had approximately fifteen different programs used by its sales representatives to induce physicians to use its many products. These programs primarily consisted of excess payments to physicians that were disguised as fees paid to them for "training," "consultation" or "market research." In fact, the government alleged that these fees were illegal kickbacks intended to induce the purchase of MERCK products.

Background: The Federal Medicaid Rebate Statute requires that drug manufacturers report their "best prices" and other cost information to the government in order to ensure that Medicaid obtains the benefit of the same discounts and price concessions that other purchasers enjoy. An exception to this rule allows manufacturers to exclude from the prices they report any discounted prices that are "nominal" in amount. The suit alleged that MERCK improperly termed as "nominal" the prices it offered to hospitals to boost their sales and excluded those discounts from the prices it reported to the government.

Impact on DHS: As an entity entitled to 340B drug prices, DHS covered entities are eligible for a portion of the MERCK settlement based on its relative damages compared to other entities which were also damaged. The settlement amount received by each facility was based on the purchase quantity of Zocor® between the second quarter of 1998 and the first quarter of 2006, Vioxx® between the fourth quarter of 2001 and the third quarter of

2004, and Pepcid® between the third quarter of 1996 and the second quarter of 2001. During the past months, several DHS facilities have received checks from MERCK, in the amounts listed below:

DHS Facility	MERCK Settlement Amount
LAC+USC Med Center	\$3,616.76
Martin L. King, Jr./Drew Med Center (now MLK MACC)	\$40,367.65
Olive View Medical Center	\$84,214.02
Harbor/UCLA Med Center	\$53,693.06
Mid-Valley Comprehensive Health Center	\$102,037.00
San Fernando Health Center	\$32,650.05
Roybal Comprehensive Health Center	\$85,239.00
El Monte Comprehensive Health Center	\$77,436.15
H. Claude Hudson Comprehensive Health Center	\$70,586.25
H. Humphrey Comprehensive Health Center	\$95,129.94
Long Beach Comprehensive Health Center	\$4,415.01
Rancho Los Amigos National Rehabilitation Center	\$1,575.48
DHS System Total	\$549,839.94

MERCK has sent each DHS facility a cover letter, indicating that Merck had agreed to pay certain amounts to 340B "covered entities" (as defined in 42 U.S.C. 265b(a)(4)) that purchased Vioxx®, Zocor®, and/or Pepcid® pursuant to an allocation method agreed upon by the DOJ and MERCK. Due to the fact that "best price" is a confidential amount, we are unable to validate whether the settlement amount received is accurate.

Unless we hear from your offices to the contrary in the next ten days, we will proceed to cash the settlement checks. We are hopeful that, in the event that the settlement payments were incorrectly calculated, the DOJ will use its persuasive authority to obtain a corrected payment to the County, even though we have cashed the checks.

If you have any questions, please let me know or your staff may contact Dr. Amy Gutierrez, Director of Pharmacy Affairs at (213) 240-7717.

RGS:sj

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors